International Labour Conference
82nd Session 1995

Report VI (1)

Extension of the Labour Inspection Convention, 1947 (No. 81), to activities in the non-commercial services sector

International Labour Office Geneva

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Sixth item on the agenda

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INTRODUCTION

At its 258th Session (November 1993) the Governing Body of the International Labour Office decided to place on the agenda of the 82nd Session (1995) of the International Labour Conference the question of extension of the Labour Inspection Convention, 1947 (No. 81), to activities in the non-commercial services sector. At that same session, the Governing Body noted that the subject would be dealt with by the Conference under the single-discussion procedure provided for in article 38 of the Standing Orders of the Conference. In accordance with the provisions of that article the Office has prepared this report for the Conference.

At the time of writing, 112 member States had ratified Convention No. 81. Article 1 of this Convention requires the State to maintain a system of labour inspection in industrial workplaces. Unless the application of Part II of the Convention is excluded by the ratifying State in a formal declaration, the obligation also extends to commercial workplaces. Convention No. 81 is supplemented by the Labour Inspection Recommendation (No. 81), concerning the organization of systems of inspection. The Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), concerns labour inspection in mining and transport undertakings, since although in principle these are covered by Convention No. 81, they may be exempted from it under Article 2(2). The Labour Inspection (Agriculture) Convention, 1969 (No. 129), requires ratifying States to set up a system of labour inspection in agriculture. Most sectors of economic activity are thus covered by international labour inspection standards, with the exception of the "non-commercial" services (NCS) sector.

However, neither the term "industrial workplace" referred to in Article 2 of Convention No. 81 nor the term "commercial workplace" in Article 23 is defined in the instrument. Under Article 26 the competent authority may itself determine which undertakings, parts or services of undertakings or workplaces are covered by labour inspection. There thus remains a whole series of non-industrial activities in the tertiary sector which in many countries are also considered not to be commercial and therefore not covered by the Convention. These include not only public administration (national, regional or local), the armed services, the police and other security services, prisons, fire brigades and other emergency services, which as a rule are neither industrial nor commercial, but often also activities such as education, health services, post and telecommunications, railways, harbours and airports, as well as public utilities such as gas, water and electricity supply, waste collection and disposal, and other social, cultural or recreational public services, including charities.

The Committee of Experts on the Application of Conventions and Recommendations noted in its 1985 general survey on labour inspection:[1] "As evidenced by several ILO instruments,[2] there is a whole series of non-industrial activities in the tertiary sector which in many countries are not considered as

commerce... This is a shortcoming in the Convention [No. 81] that should be corrected since the application of social legislation may also give rise to problems in the 'non-commercial' services sector which is rapidly expanding. Consideration might be given to adding a Protocol to Convention No. 81, to define and extend its scope."

Workers in the NCS sector may make up anywhere between ten to over 50 per cent of the active labour force in member States. They are regularly exposed to virtually all, including the most serious, "traditional" occupational hazards. They suffer the same risks of disabling injury or disease as workers in other industrial, commercial or agricultural occupations. In addition, they are often exposed to certain hazards unique to the NCS sector. Furthermore, in many member States there is a great disparity between the NCS and other sectors in the extent to which they are covered by protective labour legislation. While employees in this sector are sometimes regarded as enjoying special privileges, they often have fewer or no rights in terms of labour protection. There is also, in many countries, a great disparity between the NCS and other sectors in the extent to which labour inspection can effectively secure the enforcement of the legal provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors, as stipulated by Convention No. 81.[3] (In this context, it should be noted that while in a number of countries labour inspectors have responsibilities in the field of collective or individual labour relations, and even in other fields, such as social security, this report deals only with the principal functions of labour inspection as prescribed by the relevant international instruments.)

This text is to serve as a basis for discussion at the Conference with a view to redressing the disparities so identified. Its first chapter examines characteristic features of the NCS sector. It discusses issues related to a definition of the sector, referring to the terminology in Convention No. 81, whose extension to the NCS sector is the primary object of this report. Proposals are also made in terms of a "hierarchy" of subsectors, from activities usually associated with the core of central government executive power to those increasingly further removed from it, to the point where public institutions or enterprises, while in some countries perhaps still formally "non-commercial", in fact produce or sell goods or services in a market, often in competition with the industrial or commercial sector. Chapter I also looks into relevant economic considerations, risks and other special problems peculiar to the NCS sector, and the different conflicting interests which tend to hinder or prevent effective labour inspection.

Chapter II deals with law and practice in various member States relating to different categories of workplaces in the NCS sector, highlighting three aspects, namely the application of law, the rights of inspection, and the various systems of remedial measures applicable. This analysis is undertaken not on a country-by-country basis, but rather as a synthesis of different practices within the hierarchy of the main subsectors of the NCS. If it appears that for all the subsectors of the NCS, examples of some countries can be cited which effectively subject workplaces there to the supervision of an external, independent labour inspection system, this does not argue against the need for a

new international instrument (or instruments). Such examples only serve to show that in fact all subsectors of the NCS, even those closest to central government authority, can be thus covered; in the great majority of member States, however, this is not yet the case. In closing, the chapter takes a look at the role of the social partners in this context.

In Chapter III, the subject of this report is put into the context of recent ILO activities in the field of labour protection and, specifically, labour inspection. Finally, Chapter IV looks at the justification, the practicability and the possibilities for a new international instrument (or instruments) and serves as an introduction to the questionnaire which follows. In this last chapter, the case is made for a new international instrument to take the form of a Protocol to extend the scope of Convention No. 81 to workplaces in the NCS sector.

The report ends with a questionnaire to which governments are requested to reply, giving the reasons for their replies. On the basis of the information thus received, the Office will draw up a second report summarizing the views expressed and indicating the main points the Conference may wish to consider. As past experience has shown, member States whose law and practice are in conformity with the essential provisions of an international instrument are sometimes unable to ratify or accept it formally because of minor divergences between its precise terms and their national law or practice. It is important, therefore, to take account of any such difficulties when drafting the instrument(s) in order to determine whether sufficient flexibility can be incorporated in it (them) without detriment to its (their) substantive effect. The questionnaire accordingly asks member States to indicate any particularities of national law and practice that they believe might create difficulties of implementation and to make specific suggestions as to how such difficulties may be overcome.

In accordance with the provisions of article 38 of the Standing Orders of the Conference, the Office has prepared this report for a single discussion at the Conference and also to comply with the requirement that the report should reach governments not less than 12 months before the opening of the 82nd Session of the Conference in 1995. In order that the Office may have time to examine the replies to the questionnaire and to prepare the final report which, in accordance with article 38, paragraph 2, of the Standing Orders, must be communicated to governments no later than four months before the 82nd Session of the Conference, governments are requested to send their replies so as to reach the Office no later than 30 September 1994.

In this connection, the attention of governments is drawn to article 38, paragraph 1, of the Standing Orders of the Conference, in which they are requested to consult the most representative organizations of employers and workers before finalizing their replies. The results of this consultation should be reflected in the governments' replies, and they are asked to indicate which organizations have been so consulted.

Notes

[1] *Labour Inspection*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labour Conference (ILC), 71st Session, Geneva, 1985, para. 319, pp. 161-162.

[2] For example: the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); the Medical Examination of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 79), and the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120).

[3] Labour Inspection Convention, 1947 (No. 81), Article 3 (a).

CHAPTER I

DEFINITION AND CHARACTERISTICS OF THE NON-COMMERCIAL SERVICES (NCS) SECTOR

DEFINITION: A HIERARCHY OF SUBSECTORS

It is difficult to arrive at a single comprehensive definition of the NCS sector. In any one country it may include any or all of the following subsectors and activities: national (federal) government ministries and their administrative services; provincial/regional/state governments and administrations; district/local/municipal administrations; the armed services; police and other public security services; prison services; fire brigades and other rescue services; education services, such as universities and tertiary colleges, secondary and primary schools; health services in national and local hospitals or clinics, laboratories and pharmacies; postal services and telecommunications; railways and other public road, air and water transport services (covered in principle by Convention No. 81 but often excluded from its coverage by national law or practice); public utilities such as electricity generation, distribution and supply, gas undertakings, water supply, refuse collection and disposal, and other essential services; welfare and social services, including religious institutions, especially when providing charitable services; cultural and recreational services such as theatres, parks, leisure centres, zoos, museums, libraries, etc. In so far as any of these activities are commercial, whether in the public or private sector, they are covered in principle by Part II of Convention No. 81.

Any of the above activities may be a function of public (national, regional or local) authorities, and because they provide a service to the general public they are regarded in principle as "non-commercial" (in whole or in part), although any except the first five or six may equally be run as wholly private, commercial enterprises. National, regional or local authorities increasingly also delegate specific functions or parts thereof to the private sector, for example auditing, printing, publishing, and social or other services. However, because this varies so greatly from country to country, it is not possible to define the NCS sector in terms of certain functions which, if exercised by a public body, are automatically non-commercial, or conversely, if exercised by a private body, are automatically commercial.

A second possible distinction might be made on the basis of the purpose of an undertaking, whether it exists primarily as a public service, or for financial gain. State undertakings in many countries, however, are increasingly being required to operate without subsidy and on financially disciplined, even profit-oriented lines, and such a distinction in terms of social or financial purpose is therefore also unhelpful.

Whilst many employees in public bodies may be paid wholly or in part by the State, their employment status and their coverage by labour protection may

not differ from those enjoyed by their counterparts in parallel private-sector institutions. Conversely, however, the employment status of being a "civil servant" or otherwise employed by public bodies may significantly affect the application of labour protection laws and inspection to the point of excluding this category of employees from their purview. Thus, whether or not individuals are employed by the State or other public bodies cannot be a generally applicable criterion either.

As a rule, the more removed from central government executive power an organization, service, institution or enterprise is, the greater the likelihood that it will be covered by existing labour protection legislation supervised by labour inspection systems, to the point where government-owned firms, public corporations or public enterprises producing or selling goods or services in a market are usually fully subject to existing systems of labour inspection. Conversely, institutions or activities considered to constitute the very core of executive power, such as the central government administration, the armed services, the police, etc., are often (but by no means always) completely exempt from the purview of labour inspection. There is thus a kind of "hierarchy of exclusion" which is reflected in the order of the different activities listed above.

In considering the scope of any future instrument to extend Convention No. 81 so as to cover the NCS sector, one approach might be to allow ratifying member States themselves to define which activities are to be regarded as covered by the Convention. Another solution might be to regard all those activities not already covered by international instruments (Conventions Nos. 81 and 129, together with Recommendation No. 82) as falling under the scope of the NCS sector. For the purpose of this report, the subsectors listed above will be considered as the potential scope of the NCS sector. As far as the definition of the sector for the purposes of a future international instrument or instruments is concerned, it has been thought necessary to follow as closely as possible the terminology of Convention No. 81, particularly in Part III of the questionnaire, where it is proposed that the term "non-commercial and non-industrial sector" be used, and that it be defined as referring to all categories of workplaces that are not considered as industrial or commercial for the purposes of Convention No. 81. In this context, it may also be noted that labour protection legislation in quite a number of countries is presently undergoing considerable change with a view to extending its application to the sector so described (or parts thereof).

Exposure to risk

It seems clear that the extent to which employees should be covered by labour protection should depend on the risk of injury or ill health to which they are exposed and their vulnerability to unfair employment practices rather than the nature of the activity, the financial or social purpose of their work or their employment status, whether as civil servants, public or private employees. In principle, NCS employees should be entitled at least to the same degree of protection as those in industry or commerce. This is no minor issue, for the NCS sector employs between ten and 50 per cent of the labour force, depending on

the country, which means hundreds of millions of people worldwide, and available information indicates that NCS employees, however defined, are often afforded a lower standard of labour protection than those employed in other sectors.

In the first place, because many, if not most, commercial-sector occupations, and indeed most types of industrial, transport and agricultural activities are to be found in the NCS sector, employees in the sector are exposed, to a greater or lesser extent, to most of the same risks as those in these activities. These risks include inadequately protected machinery, hazardous substances, ionizing radiations, pressure systems, lifting and transport equipment, unsafe access and workplaces, unhealthy working environments, etc., as well as violations of labour protection legislation concerning other conditions of work.

In addition, however, many occupations in the NCS sector have particular, sometimes even unique risks, including exposure to the effects of uncontrolled research in universities and institutes; HIV, hepatitis B and viral infections in hospitals and among police and prison officers; violence against the police, prison officials, health workers, social workers and teachers; animal attacks against postal employees; the risk of injury during training in unarmed combat, fire-fighting and rescues, riot control and military manoeuvres; risks of gassing, fire and chemical burns to fire-fighters and police in traffic accidents; injuries related to the lifting of patients and the elderly; needle injuries and exposure to anaesthetic gases, sensitizing sterilizing agents and cytotoxic drugs in hospitals; the strain of shift work, night work, work on weekends and holidays and at antisocial hours for all professions with "on-call" duties; mental stress among education and health care staff and excessive hours of junior doctors and assistants; Weil's disease among sewage workers; injuries to refuse collectors and fumes from disposal of chemicals; the risk of railway line workers being struck by a train; exposure to de-icing fluids at airports and many others.

Budgetary constraints

Managers in the NCS sector not only work under most of the same pressures as those in the private sector, but also face some different, even unique constraints. Managers everywhere are subject to budgetary constraints, but in the case of the NCS sector, financial provisions may often be determined less by the "market demand" for the service than by political judgements on what the taxpayer is willing to pay, or even by macro-economic national financial considerations. On the one hand, therefore, the NCS manager cannot justify increased expenditure in terms of projected increased "sales", for individual members of the public do not benefit from services in direct proportion to what they pay. On the other hand, he or she cannot cease to trade, but must ensure the continuity of the service.

Managers will nearly always have fewer resources than they would like, and from these they must provide not only for the service itself but also, among other things, for adequate labour protection of their staff and sometimes the general public as well. This conflict of priorities, both of them stemming from legal obligations, makes for hard choices, particularly as the manager comes under pressure to provide for more health services, for example, or more

efficient policing. This can often lead to the deferral of what is not seen as urgent, as well as under-investment in improvements of buildings and other workplaces or facilities. In some cases the need to provide adequately for residents in a charitable institution is used to justify poor working conditions, with the threat that if forced to make the necessary protective expenditure the institution would have to close, to the detriment of the residents. Employment in the NCS sector therefore, does not guarantee a high standard of labour protection; the reverse is often the case.

Conflict between the needs of patients or pupils and those of staff also poses difficult problems for the labour inspector when asked by managers to weigh his or her demands not against reduced profits, as in the case of a commercial company, but against fewer clinical operations or reduced educational facilities. These are arguments of a different order, and the consequences for inspectors are discussed later in this chapter.

A particular problem arises when labour protection legislation is fully applied for the first time to particular subsectors of the NCS sector. The experience of member States that have done this is that there will invariably be deficiencies, some of them serious, that it will not be possible to rectify them all immediately, that priorities will have to be set and resources planned within a programme. One approach is to phase the application of the law to particular subsectors over time. Another is to apply the law from the outset, but in consultation with employers and workers in agreement with the labour inspectorate to use discretion in setting priorities and progressively ensuring full implementation.

Management considerations

Many organizations or institutions in the NCS sector are not structured like industrial or commercial undertakings. There is not always the same clear hierarchical management structure through which decisions at the top are transmitted and compliance is monitored. Many scientists, academics or medical consultants working in the NCS sector hold personal appointments with only limited accountability. At the same time, they work in premises or with equipment for which they are not responsible and whose standards they may only have limited power to influence. They may also be working at the frontiers of knowledge, where precautions are guided by principle rather than established rules. Their lack of accountability and single-minded concentration on the objectives of their work may lead them to expose both themselves and others to hazards. Experience shows that it is not enough to rely upon professional self-discipline, not least because however brilliant such consultants or academics may be in their own field, they are seldom aware of what labour protection involves. Indeed, when told, they may be quite hostile and have to be persuaded into compliance by any means available.

National security and internal security

Those responsible for the armed services, for police, internal security services and for prisons are understandably concerned over preventing

unauthorized disclosure of confidential information. In applying labour protection in these subsectors of the NCS, appropriate arrangements must be made. The experience of member States which have done this shows, however, that the problem is far less difficult to resolve than it appears at first. For instance, inspections may be made only by appointment, by inspectors with an appropriate level of security clearance, with documents and reports remaining secure on the relevant premises. There may have to be restrictions on the inspectors' right to take samples of substances and materials. Inspectors may legitimately be precluded from inspecting front-line or active service units, or manœuvres, or in times of declared tension. Similarly, inspectors may be precluded from inspecting during a rescue or a police or prison operation or the actual fighting of a fire. This would not, however, prevent the labour inspector from (periodically) reviewing, from a labour protection viewpoint, the procedures laid down or, after a particular incident, investigating what had occurred.

Training for hazardous occupations

One of the problems recurrent in the NCS sector is how to train people to do a potentially hazardous job without exposing them to unnecessary risk. The problem arises with the armed services, fire brigades and other rescue services and with the police, public security and prison services. On the one hand, the training must be sufficiently realistic and thorough to ensure that the lessons are learnt. On the other hand, there is a tendency for management in such services to take only operational requirements into consideration, which can expose trainees to quite unnecessary and unjustified risks, such as those involved in the use of other trainees rather than dummies when practising rescues, for example.

Whilst inspectors may have to be precluded from inspecting during actual operations, this should not prevent their examining and discussing training and operational procedures to ensure that hazardous work is prepared for and undertaken with maximum efficiency and minimum risk.

Uniformed and civilian personnel in the armed services

A number of member States currently distinguish between labour inspectors' right to supervise the labour protection of civilians working for the armed services and the rights (if any) in regard to the uniformed personnel itself. In such cases, whilst military premises which employ civilian personnel are open to labour inspection, usually by appointment, other premises and activities are not.

Prison staff and inmates

Some member States provide for the inspection of prisons and labour protection rights for prison officers, but this does not extend to similar rights of the prison inmates themselves. Others provide for the inspection, by appointment, of both prison workshops and premises such as kitchens, laundries or maintenance shops where prisoners may be working.

WHO INSPECTS THE LABOUR INSPECTORATE?

One consequence of applying Convention No. 81 fully to the NCS sector is that labour inspectorates are themselves subject to inspection. To ensure objective assessment, this should be done in a way which avoids self-inspection. A number of inspectorates have nominated particular field units to inspect the inspectorates' own premises and procedures, or have arrangements made for field units to inspect their neighbouring units in a progressive sequence. Countries with more than one inspectorate may have arrangements for them to inspect each other's premises.

IMPACT OF CHANGING LABOUR INSPECTION PRACTICES ON THE NCS SECTOR

The traditional approach of labour inspectors as practised over many years has been to visit undertakings, identify deficiencies, provide some advice, confirm by letter or notice, check by repeat visit and, if necessary, resort to coercion or punitive action. This technique, however effective as far as it goes, can cast the inspector in the role of unpaid consultant, when it is in the first instance the employer's responsibility to comply, having obtained any necessary advice. Inspectorates are therefore increasingly looking to industry and commerce to regulate themselves to exercise internal control. The cost of providing free consultancy services on labour protection to every employer is too great. Legislation increasingly requires employers to make arrangements for access to appropriate advice on labour protection matters. The inspector may well advise on the criteria for compliance, i.e. on the most effective means of complying with legal provisions (Article 3 (1)(b) of Convention No. 81) but not on technological detail, for his or her role is to ensure that protection under the law is actually provided.

The second major development has been in the presentation of labour protection to employers — no longer simply as a mandatory obligation to be unquestioningly followed, but rather as an essential component of efficient, cost-conscious, quality-oriented, modern management. International Organization for Standardization (ISO) norms for quality management systems have provoked enormous interest worldwide, initially as a means of giving assurance of satisfaction to the customer, but increasingly enabling the employer to meet working environment and health and safety objectives. It is an approach clearly reflected in some countries' concept of internal control, or internal responsibility systems, and in enforcement policies elsewhere.

If the efficient management of labour protection and the working environment is seen as essential to economic and financial success in industry and commerce, it should bring equal benefits to activities in the NCS sector. Analysing one's objectiveness and obligations, setting priorities and planning how to meet them, establishing systems and procedures to ensure quality and consistency, allocating responsibilities, providing for feedback and correction, auditing regularly and from time to time reviewing the whole system — these are the methods that any non-commercial service aspiring to efficiency should also adopt. Labour protection fits neatly into this system as yet another

important component that must receive due consideration and appropriate resources.

Seen in this way, the application of labour inspection standards to the NCS sector is not an imposition but a contribution to quality, efficiency and the satisfaction of employees and the general public.

The process of inspection in the NCS sector

Compared to the process in industry and commerce, labour inspection in the NCS sector tends to be more time-consuming and more complex, not because of its technical content, although as indicated above there are many unique risks, but rather because the inspector is often dealing with another branch of the administration. There are long and often inflexible budgetary processes, the need to take note of — even if not always to surrender to — political priorities, the public expectation of improved services, the professional independence and commitment of officials, consultants and academics who are reluctant to see funds diverted to the "lower priority" of labour protection, the lack of awareness of risks, and lastly, national security.

The labour inspector has to possess fully the knowledge, understanding, diplomacy and determination to face these problems and objections, and if possible overcome them. This might involve negotiating different time scales for improvements in general, or for the removal of various hazards, compromising on physical solutions or persuading senior officials that intelligent and properly resourced management of labour protection and the pursuit of progressive employment policies contribute to the overall efficiency of the organization and to the quality of service. On the other hand, it is important that the inspector has the necessary powers, and is able to and seen to be using them to require needed improvements, for this may be the only way to influence the political process which will make the necessary additional funds available, or at least reallocate existing resources. In such cases, the inspector, by giving an independent outsider's opinion, often also provides welcome support and strengthens the hand of the NCS sector manager.

Because the use of remedial powers may not be as straightforward as in industry and commerce and may itself cause embarrassment, inspectors try to achieve improvement by persuasion and agreement if possible. If this ultimately fails, they must of course be prepared and able to use whatever coercive or penal instruments exist. For all these reasons, however, labour inspection in the NCS sector is more time-consuming and more complex than in other sectors. Incidentally, it also demands particular skill. Together these issues present labour inspection with a significant challenge. Member States have responded to these considerations in very different ways.

CHAPTER II

LAW AND PRACTICE IN RESPECT OF THE NCS SECTOR

General considerations

There are three aspects to a review of national law and practice: whether — and if so, which—labour protection legislation applies to the NCS sector, which rights of inspection are allowed to labour inspectors and how they exercise them, and lastly, which preventive, remedial or, ultimately, punitive powers are available to them. This chapter begins by examining the legislation that applies and the rights of inspection that exist in the different subsectors of the NCS sector in member States which already have inspection covering parts or all of it. A separate section then examines the preventive and remedial powers available to inspectors when irregularities are found. These too vary from one country to another, a significant criterion in some countries being whether the employees concerned have the status of civil servants. There is a description of other forms of persuasion or, if necessary, pressure which have been developed by some Members to ensure compliance, and the chapter closes with an examination of the relevant role of the social partners in the NCS sector.

Generally speaking, countries such as *Denmark, Ireland,* the *Netherlands, Norway, Sweden* and the *United Kingdom* which have introduced new comprehensive labour protection legislation in the last 20 years have applied this equally to virtually all parts of the NCS sector with practically all or most of the rights of inspection for labour inspectors as provided for in Articles 12, 13 and 17 of Convention No. 81. However, as will be seen later, even then certain concessions are made in some cases for particularly "sensitive" aspects with regard to certain parts of the NCS sector. Countries which tend to legislate by specific technical laws or decrees, such as *Austria, Belgium, France* and *Germany,* usually make special legislative or administrative arrangements, and sometimes also "internal" inspection arrangements, in respect of the NCS sector. Member States of the European Union are in the process of introducing legislation to implement the framework Directive on safety and health at the workplace,[1] which applies to all employment, including the NCS sector, except the armed services, police and civil protection services, where, however, labour protection must be ensured as far as possible. *Japan* has special inspection arrangements for specific subsectors. However, there are very many Members which effectively exempt all, or large parts, of the NCS sector from both the application of any legislation and inspection. Nevertheless, the situation can be said to be fluid, and for some time now there has been a clear trend towards extension of labour protection legislation and inspection of its application to sectors or subsectors other than those traditionally covered by labour inspection systems. The following overview of main subsectors will highlight this trend.

NATIONAL (FEDERAL) GOVERNMENT ADMINISTRATIVE SERVICES

In many countries national (or federal) government administrative departments both in the capital and in the provinces are exempt from general labour legislation and the usual inspection system. This is because those employees who are civil servants have a special employment status conferred by custom, contract, the Constitution, separate legislation or internal government instruction. This is the case, for instance, in *Belgium, Chile, Colombia, France, New Zealand, Portugal, Spain, Uruguay,* and *Hong Kong* and several Asian countries. In *Bangladesh, India, Pakistan* and *Singapore,* government employees are not covered by employment legislation or labour inspection. In *Belgium* and *France* labour protection is made the internal responsibility of each ministry, and ministries can call for the advice of the relevant inspectorate, which has no coercive power, however. In *Germany,* too, responsibility for labour protection lies with the minister concerned. A very small inspectorate is maintained by the relevant accident insurance authority for non-civil servants working in government administration, but its functions are almost purely advisory. *Canadian* government departments are subject to normal labour protection legislation, though civil servants enjoy special employment standards. In the *United States* the safety and health of federal employees is the responsibility of the head of the relevant agency or department, which must conduct workplace inspections at least annually; the responsibility extends to federal employees working on the premises of a private employer. Federal agencies must comply with all Occupational Safety and Health Administration (OSHA) standards applying to the private sector unless alternative standards have been approved. Other legislation on conditions of work is supervised by the Federal Employment Standards Administration (ESA), which does inspect some of the federal agencies, such as the postal services. In the *Russian Federation* federal civil servants are exempt from inspection, although employees of other federal organs, notably the judiciary, and non-civil servants working for different federal bodies are covered by inspection conducted by their branch trade union; the system is in the process of changing from union inspectorates to a single, State-run labour inspectorate. In *Switzerland* the Federal Inspectorate (which oversees and coordinates the work of the Cantonal Inspectorates) inspects and enforces safety and health laws (but not, for instance, working hours requirements) in respect of national government bodies. It cannot, however, impose sanctions. In *Japan* the conditions of work of civil servants, except those in state enterprises, are overseen not by the labour inspectorate but by the National Personnel Authority, a separate government unit. Some states of *Australia* investigate occupational health and safety complaints or disputes at federal government offices, but there is no preventive inspection. In *Austria* civil servants are covered by a separate law, the Federal Employee Protection Act (which is very similar to the safety, health and general conditions of work legislation applying to industry and commerce), and are subject to inspection. In the *United Kingdom* central government offices are inspected by health and safety inspectors whose own premises have, however, been entrusted to the local authorities for independent inspection. In the *Nordic countries, Ireland* and the *Netherlands* there is full application of the law and inspection; in addition, in

the *Netherlands*, labour inspection district offices inspect one another and one inspects the inspectorate's headquarters. In *Poland* and *Hungary* there is also full application of the law and inspection, and the director of an NCS establishment (and in *Poland* also those acting on his or her behalf) is held personally responsible.

Provincial, regional, district and local administrative services

In those countries where the employees of provincial and regional administrations and district and local authorities have the status of civil servants, they may be exempt from labour inspection in the same way as their colleagues at national (federal) level. In *Kenya*, *Nigeria* and many other countries, however, no labour protection legislation applies, and in *Bangladesh*, *India* and *Pakistan* employees of municipal bodies are generally exempt from conditions of service legislation. In *France* conditions of service are determined by a special law, and although they are exempt from inspection the various regional, departmental and local administrations have to appoint one or more officials to oversee internal health and safety, although they have no coercive power. There, as in *Germany*, the labour inspector has no right of inspection if the official in charge is a civil servant. In *Belgium*, a provincial governor or mayor may be held criminally liable. In *Portugal* regional and local administrations are exempt. In *Spain*, the conditions of work of employees of the national administration, autonomous communities and local authorities are exempt from inspection if they are civil servants but not if they are employed under a labour contract. The same is generally true of employees of regional authorities in a number of *Latin American* countries. In *Japan* major administrative bodies are subject to inspection, partly by the Labour Inspectorate and partly by officials of the Local Personnel Commission. In *Germany* the inspection of labour protection regulations concerning state employees is the responsibility of the social security system, namely the relevant mutual accident insurance associations. In some Länder, by agreement between the Land administration and the Land's own labour inspectorate, state premises are inspected by the latter, although in no case can it issue legally binding enforcement notices or take penal action. In the case of municipalities and local authorities, however, inspectors of the mutual accident insurance associations do have power to issue enforcement notices and impose administrative fines, although in practice this rarely occurs. In *Australia* arrangements vary between states, some regarding provincial employment as exempt by virtue of Crown immunity, whilst others such as New South Wales provide for inspection and the resolution of disputes by conciliation mechanisms. In the *United States* individual states are allowed voluntarily to establish their own OSHA programmes, which then also apply to state, county and municipal employees, and in that case the federal OSHA monitors the effectiveness of the state programme only. However, in those states which have not established an OSHA-approved programme, federal OSHA standards do not apply to state or local employees and no OSHA inspections are conducted, although some of these states may have their own inspection programmes for state employees. The ESA supervises some 80 different federal standards through on-site inspection;

these standards apply without distinction to all state, county and municipal employers in all states and federal territories. At these levels, ESA can and does apply the full range of sanctions (notably civil monetary penalties), which can be combined with criminal charges. In *Austria* the Federal Employee Protection Act is enforced by special administrative units of the provincial authorities with largely persuasive powers, whilst in *Switzerland* cantonal inspectors enforce national safety and health law in respect of the activities of cantonal authorities. In the *Russian Federation* regional, municipal and local authorities are subject to inspection by the civil service branch trade union inspectors. In the *Nordic countries, Ireland, Hungary,* the *Netherlands, Poland* and the *United Kingdom,* labour inspectors can exercise their full powers against regional and local authorities with the right to impose fines (in the *Scandinavian countries*) and to institute legal prosecution.

The armed services

In the case of the armed services, regarding installations such as ordnance factories, military airports, naval dockyards, maintenance workshops, etc., defence authorities usually have four major concerns: security of confidential information and activities; possible prejudice to their capacity to respond to an emergency; the difficulty of opposing labour protection for uniformed personnel if inspection of civilian employees is conceded; and lastly, the extent to which inspection is desirable or even possible in relation to active service units or combat training. As a result three different approaches appear to have emerged — total exemption, exemption subject to some form of internal inspection, and the negotiation of certain special arrangements for inspection by the state labour inspectorate, sometimes covering only civilian personnel working on military premises.

Thus, for example, *Hungary, Singapore* and other countries appear to give total exemption to the armed services. In *Spain's* military establishments and workplaces, both uniformed and directly employed civilian workers are exempt from labour inspection, but labour protection is overseen by special headquarters units. In both *Japan* and *Germany* the defence forces have their own internal safety services and are thus exempt from external inspection. *France* has appointed "general controllers" to cover occupational health and safety aspects of the armed services, including state-owned ordnance factories, workshops and construction work. Private explosives and military equipment factories are inspected normally but may impose security controls on inspectors. In *Bangladesh, India* and *Pakistan* defence installations and ordnance factories are subject to inspection by prior arrangement. In *Belgium,* the Ministry of Defence may authorize inspectors of the labour ministry to visit workplaces outside specifically military areas, and a special permit is necessary to inspect civilian building works in military establishments. The army does, however, have its own inspection system together with occupational medicine and safety and health services. In the *Russian Federation* civilian employees are subject in principle to inspection by a small number of branch trade union labour inspectors who must obtain prior permission to visit premises. (Inspectors are usually former officers in charge of occupational safety and health, who find

ready access and a common language with their colleagues on active duty.) *Austrian* military establishments are subject to inspection by labour inspectors under the Federal Employee Protection Act unless "military purposes do not permit". In *Denmark* and *Switzerland* parts of military establishments, such as workshops and building sites, where civilians are employed, and in *Canada* all establishments with civilian workers are subject to inspection. Similarly, in the *United States*, OSHA can inspect facilities such as military academies, repair shops and construction work if there are civilian employees. Only "uniquely military equipment systems and operations" are excluded. In *Poland* military establishments and workplaces which employ civilian workers are subject to labour inspection under procedures agreed between the chief labour inspector and the Minister of National Defence. In the *Netherlands*, *Sweden* and the *United Kingdom*, and in *Norway* except for military aviation personnel, military establishments are subject to normal labour inspection, although front-line units which are operationally active, or battle training and combat manœuvres are not inspected. In these countries special arrangements are made to protect security, including inspection only by appointment, by named inspectors who have appropriate security clearance, and the retention of confidential documents on the defence premises. However, the fact that uniformed personnel and armed services premises are subject to the law and to labour inspection is now fully accepted in these countries.

Police and other security services

Whilst in the *Nordic countries* and, except when they are actually in action, in the *Netherlands* the police are subject to normal labour inspection, in the *United Kingdom* they are technically not employees but "office holders" operating under the control of their chief constable in accordance with ministerial guidance. Chief constables have agreed to operate in compliance with the spirit of health and safety legislation and the labour inspectorate inspects health and safety arrangements of the police by voluntary agreement, although in future the situation is likely to change to normal enforcement. In *Japan*, inspection of the police is the responsibility of the Local Personnel Commission. In some Länder of *Germany*, only large police workshops for vehicle repair are inspected. In the *Russian Federation*, the police (militia) are not inspected, because they cannot unionize, and where there is no responsible branch union, there is no inspection; however, once the responsibility for labour inspection has been transferred to the State, as is now intended, this is likely to change. In *Poland*, establishments with civilian employees are inspected, but in *Hungary*, as in other countries, police are exempt from labour inspection, either because they are civil servants or because external inspection is not regarded as appropriate.

Prison services

In the *Nordic countries*, the *Netherlands* and the *United Kingdom* labour protection legislation covers both prison service officials and, *mutatis mutandis*, prison inmates, although technically the latter are not considered as workers. Thus, prisons and prison workshops are inspected in the normal way. In other

countries, however, they are exempt, either because the employees are civil servants or, again, because external inspection is not regarded as appropriate. Prisons in *France* and *Spain* are not subject to inspection, and neither are workshops unless they are managed under contract by someone who is not a civil servant. Prison officials in *Germany* are not subject to inspection, but prison workshops may be investigated either by the Land's own inspectors or by mutual accident insurance association inspectors. In *New Zealand* prison workshops are inspected on an advisory basis. In *Poland* only prisons with non-uniformed employees are inspected.

Fire brigades and rescue services

Overseeing the health and safety of fire-fighters, who in many countries include both NCS employees and volunteers (works fire brigades generally being subject to inspection as part of the industrial enterprise to which they belong), presents a particular problem since when they are actively "at work" they are fighting a fire or undertaking rescue operations. Nevertheless, labour inspectorates can and, in a number of countries, do have a role in ensuring that realistic training is undertaken without exposing fire-fighters to unnecessary risk. In the *United Kingdom* legislation and inspection apply fully, although as in *Sweden*, there is an understanding that inspectors will not intervene during the actual fighting of a fire. In other *Nordic countries* and the *Netherlands* fire brigades are subject to normal occupational health and safety inspection, although *Norway* tends to leave this to the directorate of fire and explosives, which also inspects major hazard premises. In the *Netherlands* the law applies to fire brigades only in so far as it does not affect their ability to undertake their duties, which sometimes involve a measure of risk. In *Austria*, professional fire-fighters are covered by the provincial or municipal Employee Protection Act, but voluntary NCS-sector fire-fighting associations in small communities do not appear to be inspected. In *New Zealand* only repair shops and offices are covered by the labour inspectorate, and in *Poland* only non-uniformed employees. In *France*, fire-fighters are civil servants, and their occupational health and safety requirements are overseen by the medical director of the departmental health and rescue service. In *Germany*, the accident funds or mutual accident insurance associations of the social security system employ their own inspectors, and labour inspectors do not generally intervene, except where voluntary agreements to supervise have been reached. In *Japan* fire brigades are overseen by the Local Personnel Commission. The *Hong Kong* fire service is exempt from both legislation and inspection. This is still the case in many other member States.

Education services

In *New Zealand*, *Pakistan* and other countries universities are exempt from labour inspection. The *Hong Kong* inspectorate visits schools on an advisory basis. In *France* and *Spain*, as in other countries, professors and lecturers at universities and other institutes of higher education are civil servants and therefore exempt from labour inspection, as are school teachers who have the

status of civil servants. Whilst university laboratories are not inspected, workshops of technical schools are, and if matters are not rectified, they are taken up by the departmental director of labour with the headmaster. Prosecution is not possible, however. In *Germany*, few substantive labour protection regulations apply to public educational institutions, but any inspection, predominantly in technical high schools, is undertaken either by the state labour inspectorates (sometimes on the basis of voluntary agreements with the state authorities) or by the relevant mutual accident insurance association, as there is compulsory accident insurance in all establishments. In *Japan*, the national education services are the responsibility of the National Personnel Authority. Locally managed establishments, however, fall within the purview of the Local Personnel Commissions. In *Kenya* and *Nigeria*, only areas where factory-type processes take place, such as maintenance workshops or kitchens and laundries, are covered. In the *United States*, publicly run schools and universities are only covered by inspectors in those states and territories which have an OSHA-approved programme or one of their own; thus, public universities and schools are inspected in some states but not in others. Employment standards, however, are fully subject to inspection by ESA investigators in all states and federal territories. In *Mexico* autonomous universities are inspected. In *Austria*, education is overseen by the labour inspectorate enforcing the Federal Employee Protection Act. In the *Nordic countries*, *Hungary*, *Ireland*, the *Netherlands*, *Poland* and the *United Kingdom*, universities and schools are subject to normal labour inspection and sanctions, and in the *Russian Federation* this is carried out by the science and education branch trade union inspectors.

Health services

Hospitals and clinics may variously be operated by central or local government, special authorities, charities or the private sector, and this may well affect the application of the law and inspection regime. In *Hong Kong* hospitals are exempt, although they are expected to comply with relevant legislation. In *India*, *Kenya*, *New Zealand*, and *Nigeria* only factory-type processes are inspected. In *France*, public hospitals have to comply with health and safety (but not employment) laws, but the inspector can only advise. In *Germany*, inspection of hospitals is a state responsibility, though inspectors cannot currently enforce general workplace regulations, but only certain special regulations on ionizing radiations, dangerous substances, etc. which apply to employees in all sectors. Inspectors of the relevant mutual accident insurance associations may also inspect hospitals, issue enforcement notices and impose fines, although these powers do not appear to be widely used. In that country, for instance, the churches and other charities have some 500,000 employees involved in running hospitals and homes for the aged, but as they are not obliged to insure their employees they are exempt not only from state, but also from social insurance inspection. In the *United States* private hospitals are covered by OSHA, but public hospitals are only inspected in those states with OSHA-approved or state programmes. In other states, neither federal nor state OSHA standards apply and no inspections are carried out. Again, other

conditions of work are fully subject to ESA inspection, regardless of whether the establishment concerned is public or private. In *Belgium*, the *Nordic countries*, *Hungary*, *Ireland*, the *Netherlands*, *Poland* and the *United Kingdom*, hospitals are subject to normal labour inspection and the full range of sanctions, and in the *Russian Federation* this is carried out by sectoral trade union inspectors.

Postal and telecommunications services

Inspection of postal and telecommunications services in many countries depends on whether they are regarded as state, parastatal or private undertakings. In *Belgium* and *Pakistan*, for instance, the service is exempt from labour inspection, as is the case for the majority of employees in *France* and *Germany*. In *Spain* about half the employees are civil servants and exempt from inspection, whilst the rest are not. Both *France* and *Germany* have an internal system of inspection, in *Germany* with procedures for issuing notices but not fines. In *Switzerland* the services are subject to federal inspection, and in *Canada*, although most are federally regulated, some are still subject to provincial inspection. In *Austria* inspection is the responsibility of a separate organization, the state-run Transport Inspectorate. In *Hong Kong* only factory processes are inspected by the labour inspectorate. In *Japan* the service, though staffed by civil servants, is subject to inspection by the labour inspectorate and sanctions can be applied. In *New Zealand*, the *Nordic countries*, *Hungary*, *Ireland*, the *Netherlands*, *Poland* and the *United Kingdom* the services are subject to normal labour inspection; in the *Russian Federation* this is carried out by trade union inspectors.

Railways and other public transport services

Arrangements for the inspection of railways vary between countries and include various unique features, such as specialized railway inspectorates and the formal oversight by the labour inspectorate of a railway organization's own internal inspectorate. In *Hungary*, *Japan*, the *Netherlands*, *Poland* and the *United Kingdom* they are subject to normal labour inspection, and in the *Russian Federation* this is carried out by a specialist railway workers' union inspectorate. In *Austria* and in *France* they are overseen by the transport labour inspectorates with full powers. *Belgian* state railways are subject to normal labour inspection, but this excludes conditions of work requirements, whilst in *Germany* non-federal and private railways are subject to state labour inspection, but the federal railway system is exempt, although it has a substantial internal safety organization. In *New Zealand* and *Pakistan*, only industrial activities such as workshops are subject to labour inspection. The railways of *Denmark*, *Canada*, *Norway*, *Sweden*, and *Switzerland* have substantial internal safety organizations, but the *Nordic countries'* inspectorates oversee employee safety mainly by auditing the management's own systems of "internal control". In *Norway* and *Sweden*, as in *Japan*, separate transport directorates or ministries are responsible for railway installations and passenger safety. In *Japan*, harbours and airports are also under the control of the Ministry of Transport, and arrangements for labour inspection depend on the status of the workers. Civil

servants are overseen by the National Personnel Authority or Local Personnel Commission, and all others by the labour inspectorate. In about half of member States, labour protection of seafarers and on board ships is under the responsibility of a central inspection system, either the labour inspectorate, or that of the transport or maritime ministry. In other countries, a number of independent organizations are responsible for inspecting specific conditions. Thus, for example, in *Pakistan* docks regulations are enforced by a separate inspectorate. In *New Zealand*, the *Nordic countries*, the *Netherlands*, *Germany*, *France*, *Poland*, *Spain* and the *United Kingdom* labour inspectorates have responsibility for overseeing the loading and unloading of seagoing ships. In addition, in *Germany* the maritime mutual accident insurance inspectorate controls the safety of working conditions on board ships. In *France*, maritime ports which are state establishments are not subject to labour inspection, labour protection being overseen by officials of the transport ministry without coercive power. *Canadian* harbours operated by Ports Canada are subject to federal labour inspection. Other inland public road or water transport operations in many countries come within the purview of the labour inspectorate or, as in *Austria*, the Transport Inspectorate.

Utilities, including electricity, gas, water and waste

Generally speaking, electricity and gas generation and supply are subject to normal labour inspection, although in *Uruguay*, for instance, the employees are regarded as civil servants and not subject to inspection. In *Spain* most activities undertaken by private companies are subject to labour inspection, but where municipalities retain responsibility, their employees, if civil servants, are exempt. In *Singapore* only utility workshops are subject to inspection. In *France* inspection of both electricity and gas undertakings is the responsibility of the Regional Directorate for Industry and Research, which has primary responsibility for major hazard control in all sectors. Waste collection and disposal services are generally treated like any other municipal activity, although in *New Zealand* they are exempt whilst in *Hong Kong* they are inspected but have Crown immunity. In *Germany* waste collection by communes is exempt from inspection, but not that carried out by private companies.

Charitable, cultural, recreational and other NCS activities

As to other NCS undertakings, it is impossible to generalize about the relationship of labour inspection to charities and other social and welfare services, or cultural and recreational services, although, as has been seen, the number of people employed can be substantial, as can the risks to which they are exposed. There are many different forms of parastatal boards and enterprises, and last but not least, public commercial entities. Whether or not such services and enterprises are subject to labour protection law and to inspection depends mainly on history and tradition, the status of the employees, the nature of the activities and the legal terms under which they were established. There are many countries where such bodies are fully subject to labour legislation and inspection; in others they are subject by law to inspection but not inspected in

practice; and in still others such bodies are totally exempt from law and enforcement. In the present climate of privatization and contracting to the private sector of functions hitherto considered as being part of the State's responsibility, the position is in any case constantly changing.

"Internal" inspection

It is sometimes argued that labour inspection is unnecessary because a particular NCS has exceptionally effective "internal" inspection, an arrangement quite widely adopted in respect of the armed services as well as railways, postal services and sometimes other utilities. The arguments in favour of such an approach are that the relevant officers are usually technically competent, understand the technology and can take account of budgetary constraints and programmes as well as security considerations. Against this it is argued that such inspections may not be sufficiently objective and that the officials concerned have too narrow an awareness of the broad range of labour protection matters. Often drawn from the ranks of the service they are called upon to inspect, and often forming part of the line management, they may be too lenient even towards serious problems and insufficiently critical. Their awareness of budgetary constraints may unduly influence their recommendations. It is also argued that there is little difference between such an arrangement and the internal labour protection organization of any large private enterprise — which, however, is also unquestionably subject to external, independent state inspection. More seriously, the future careers of "internal" inspectors often depend on the very officials they must occasionally necessarily criticize if they are to be effective. It can therefore be safely stated that such "internal" arrangements are no adequate substitute for independent, external state labour inspection supervision. In practice, many countries try to combine the advantages of both systems, internal and external, through clear institutional cooperation arrangements. In *Canada*, for instance, the transport ministry undertakes inspections of the railways on behalf of the labour department and issues enforcement notices. *Denmark*, *Norway* and *Sweden*, as already mentioned, apply their "internal control" approach, which, however, involves supervision by the labour inspectorate of the railways' internal safety organization. In the *United Kingdom* the labour inspectorate monitors the Ministry of Defence inspectorate, which oversees the handling of military explosives.

Remedial powers, sanctions and alternative measures

In most countries remedial measures include a variety of mechanisms such as formal letters pointing out the infraction, enforcement notices requiring action within a specific time or prohibition (stop) notices, or on-the-spot, administrative or coercive fines, and as a last resort, criminal prosecution. Many countries allow the possibility of applying both administrative and criminal law. Some do not permit criminal prosecution of any NCS-sector juridical person, whilst others allow this as well as the prosecution of individual directors and managers. Whatever the system, it would seem that an effective pattern of

remedial notices and punitive sanctions must exist, even if sanctions are infrequently used. In the absence of such mechanisms, an NCS-sector establishment will be under much less pressure than private industry or commerce to comply with regulations and/or inspectors' findings, to the point of being able to disregard them at will. If nothing else, inspectors risk losing face and credibility if they require remedies which the establishment can regularly ignore with impunity. This greatly reduces the effectiveness of any inspection. Admittedly, the value of fining a government ministry or agency is sometimes questioned, as this merely constitutes a transfer of taxpayers' money from one department to another. Against this, experience has shown that the publicity that such possibilities entail may have a strong promotional effect towards improving labour protection.

In almost every country one recurrent question has been whether one arm of the State can prosecute another. In the *United Kingdom* this issue is covered by so-called "Crown immunity", where the State regards itself as "bound by the law" but remains immune from prosecution. Other countries, such as *Germany* for instance, have asserted that the State looks after its civil servants both as a moral duty and a contract of service, therefore no external surveillance is necessary and sanctions are certainly excluded. In *France*, too, civil servants have specially protected employment conditions, and various arrangements exist to provide labour protection advice and supervision of organizations where they work. However, no inspector can impose coercive or punitive sanctions. The view is held that it is constitutionally unsound to envisage one ministry imposing its will on another. In *Japan* the National Personnel Authority can issue improvement orders to national institutions but cannot impose sanctions. However, it is worth noting that a growing number of countries, such as *Canada, Norway, Sweden* and the *Netherlands*, have in effect eliminated any difference between sanctions applied to the NCS and those in industry or commerce. In *Poland* the director of a state office or enterprise and/or persons designated, depending on their responsibilities, can be held personally liable.

In countries such as *Belgium, France* and *Germany*, where inspectors cannot generally prosecute a juridical entity, but only an individual, the fact that an organization or service is directed and managed by civil servants means that they are exempt from penal procedures, and in *Germany* from administrative fines as well. This includes all public authorities and establishments under the general supervision of central government and, in *Belgium*, certain parastatal bodies as well. In *Spain*, juridical bodies can be prosecuted and fined for deficiencies affecting those employees who are not civil servants. In countries such as *Germany, New Zealand* and *Switzerland*, where inspections are undertaken but no formal sanctions mechanisms exist, contraventions are generally followed up by the inspectorate through administrative and disciplinary channels within the ministries concerned, if necessary up to cabinet minister level, although they are generally resolved at an earlier stage. *Australian* federal bodies are apparently liable to prosecution.

In the *Russian Federation*, trade union inspectors have the usual rights of entry as well as the right to stop work and machinery and close all or part of an establishment. Fines (of up to five times the recognized minimum wage) can theoretically be imposed on individuals, but not juridical entities, although

certain administrative categories are exempt. In the *Netherlands* inspectors make use of various procedures to try to achieve compliance by agreement without punitive action. In *Denmark* the labour inspector can apply the full range of sanctions except in relation to central government administration and its regional units. In *Sweden* this exemption extends to central government boards, the armed services, state museums, the police and universities. In that country, the exemption from contingent fines also applies to so-called state business authorities, which include the postal service, railways, energy generation and defence weaponry. However, state-owned limited companies such as telecommunications are subject to contingent fines, as are district and local authorities, which run many different NCS, such as schools, etc. The inspector can issue improvement and stop notices against state administrations and state business authorities, and failure to comply can result in prosecution of an identified individual. Similarly, in *Denmark* public enterprises may be subject to criminal fines by a magistrates' court and in *Norway* labour inspectors have the power to impose coercive fines, not only against local government and parastatal bodies but also against establishments of the central Government itself. There can, however, be difficulties in exacting payment. Prosecution is usually reserved for cases following accidents.

In the *United States*, federal OSHA cannot impose fines for infractions on other federal agencies. Some states use the judicial system to impose sanctions and some assess them directly against the offending authority or agency as if it were an industrial or commercial employer. OSHA cannot, however, impose sanctions against state agencies in those states or territories without an OSHA-approved programme. In those that have such a programme, fines for contraventions are often first assessed (at a maximum of US$ 70,000 for each contravention). Subsequently, a deal may be struck to reduce the amount of fines in exchange for written agreements to improve labour protection, i.e. by setting up joint in-service labour protection committees, organizing safety training programmes, etc. This is said to constitute a very effective means for attaining the inspectorate's overall goal: a better working environment. Federal ESA can and does apply sanctions, including fines against state and local authorities. Interestingly, these fines are not returned to the federal treasury but accredited to ESA's own budget, to offset the costs of inspection. In *Hungary*, such fines help to finance activities of the Working Environment Fund. In *Canada*, federal authorities can be fined up to Can.$ 1 million.

In the *United Kingdom*, the central Government, the armed forces and police can claim "Crown immunity" from prosecution. However, inspectors can issue "Crown enforcement notices", which order an immediate stop or compliance within a given period. These are discussed with trade union representatives and, if not complied with, are pursued by the Department of Employment, responsible for the inspectorate, and the NCS-sector responsible department, at progressively higher levels, if necessary to the cabinet. Even if the procedure seldom has to be fully invoked, its very existence serves to exert sufficient pressure on the NCS-sector unit to comply with the inspectors' requirements. Military personnel can sue the Ministry of Defence for negligence, which is also seen as a spur to improving labour protection management. Although the continued existence of "Crown immunity" is opposed by the

tripartite Health and Safety Commission, in practice the foregoing procedures have enabled inspectors largely to achieve their labour protection aims.

An alternative means of bringing pressure to bear on NCS bodies is the *Austrian* system of combining administrative measures with publicity. Thus, all deficiencies noted under the Federal Employee Protection Act must be published together with the official reaction of the relevant ministry. Serious deficiencies must be reported to the Labour Inspectorate's headquarters and to the relevant NCS-sector minister, who is obliged to comment to the Chief Inspector of Labour about the action taken. Formal demands, with the character of prohibition notices, are also issued to the relevant minister if action is not taken. In the *United States,* the cabinet member responsible for OSHA is required to submit each year to the President a report on the safety and health status of individual federal agencies, and continuing disagreements on action taken to implement inspection reports may be submitted to the President for resolution. In addition, federal agency managers' individual performance has to be assessed against their units' labour protection record. *Canada* appeals to financial self-interest by demonstrating the increased insurance and compensation costs of poor compliance. The *Netherlands* was able to achieve government agreement to the full range of sanctions being applied to the NCS-sector by allowing a very long time for the implementation of relevant legislation, from entry into force to actual application: for instance, some eight years in education and hospital services.

Employers and trade unions

Where the State is the employer, the trade unions are seen in many countries as having a particularly important role (not least because there is usually an above-average degree of unionization in that sector). In *Australia, Austria, Belgium, Cyprus, France, Germany, Japan, Mexico,* the *Nordic countries,* the *Netherlands* and *Spain,* for instance, NCS bodies are required or encouraged to establish joint labour protection committees, usually when there are more than a specified number of workers. In *Norway* and *Sweden,* career members of the armed forces have trade union safety representatives (although conscripts' representatives have fewer rights). There are also safety representatives and committees in the *Netherlands'* armed forces. Safety representatives in the NCS sector may be elected from amongst the employees, as in *Austria, Cyprus, Denmark, Finland, Germany, Luxembourg,* and *New Zealand,* or appointed by the trade union, as in the *United Kingdom. Denmark* and the *United Kingdom,* among other countries, both have joint sectoral councils or advisory committees to resolve problems and set standards, for instance in the health service, education or transport sectors. In the *United Kingdom* the inspectorate's Defence and Disciplined Services Group maintains a dialogue with the armed services, the fire brigades, police and prison authorities as well as the relevant trade unions. In the *Netherlands,* the Working Environment Subcommittee of the tripartite Social and Economic Council regularly considers matters of labour protection and inspection policy. In that country, normal requirements to establish safety committees where more than 35 people are employed apply in the NCS sector, except that in the case of national, regional and municipal

administrations, as well as education, the equivalent consultative bodies have fewer powers than other works councils. (For instance, they cannot demand that the head of a unit undertake expenditure on labour protection in excess of his or her budget and authority.) In the *United States*, federal agencies are given the opportunity to establish occupational safety and health committees, and where such a committee meets OSHA requirements, OSHA is precluded from conducting "unannounced" inspections. States and territories that have OSHA-approved programmes must likewise establish joint committees.

The practice of structured NCS-sector employer/employee collaboration in the field of labour protection, and of cooperation with the labour inspectorate (as promoted by Article 5 of Convention No. 81, and Paragraphs 4 to 7 of Recommendation No. 81) can thus be seen to be widely accepted in different member States. As has been pointed out by the ILO's Committee of Experts on the Application of Conventions and Recommendations,[2] such cooperation appears to be particularly productive when, despite financial strictures, governments wish to make progress in implementing the labour inspection instruments. Applying to the full the Convention's provisions as to collaboration between the labour inspectors and employers and workers and their organizations will show ways not only to target limited inspection resources and facilitate inspection visits that take place in a correct and helpful manner, but also to determine rational priorities for governments' policy for further development of inspection systems.

Conclusions

The issues under review are thus of obvious concern also to the social partners, and many countries can be seen to have given considerable attention to labour inspection in the NCS sector. Others, however, hardly seem to have considered the question. Even where legislation seems to apply, it often appears that in practice little if any inspection is in fact undertaken. Such inspections as are made tend to be reactive to complaints or accidents rather than preventive. This may be because of lack of resources, a perception that the NCS sector is not a high-risk area and therefore not a high priority, or indeed the absence of effective powers of enforcement, remedies and sanctions. The preceding considerations of this chapter would therefore seem to lead to the conclusion that the need for remedy by way of an international instrument is evident.

The large number of workers involved — in one member State alone more than 20 million employees are said to work in the NCS sector, the majority of which are not subject to any form of labour inspection — the many, often particular hazards present in this sector, the need for equal protection and universal application of existing international standards, and many other reasons outlined above clearly underline the necessity of providing labour inspection supervision to all workplaces in the NCS sector.

Notes

[1] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (*Official Journal of the European Communities*, No. L183, 29 June 1989, pp. 1-8).

[2] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), International Labour Conference, 79th Session, Geneva, 1992, para. 57, pp. 21-22.

CHAPTER III

THE ILO AND LABOUR INSPECTION ACTIVITIES RELEVANT TO THE NCS SECTOR

This short chapter outlines relevant developments at the international level and the importance the ILO attaches to labour inspection, characterized by the Organization's continuous efforts in support of extending the scope of labour inspection standards towards universal application.

STANDARD-SETTING ACTIVITIES

Since its inception in 1919, the ILO has devoted particular attention to questions of labour inspection. The very treaty that created the organization included labour inspection among a set of general principles (Treaty of Versailles, Part XIII, article 427, point 9): "Each State should make provisions for a system of inspection... to ensure the enforcement of the laws and regulations for the protection of the employed". In consequence, one of the earliest international instruments, adopted at the First Session of the International Labour Conference that same year, was the Labour Inspection (Health Services) Recommendation (No. 5). Four years later labour inspection was the sole item on the agenda of the Conference, which adopted the Labour Inspection Recommendation, 1923 (No. 20), the forerunner of the Labour Inspection Convention, 1947 (No.81).

Other standards concerning labour inspection were subsequently adopted, such as the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), and the Inspection (Building) Recommendation, 1937 (No.54). However, it soon became clear that only instruments with a mandatory effect could ensure that the ILO's standard-setting activities in labour inspection would be really effective. Convention No. 81, covering industry and, normally, mining, transport and commerce was then one of the first standards to be adopted after the war. The Labour Inspection (Agriculture) Convention, 1969 (No. 129), and Recommendation (No. 133) followed later.

In addition to the standards dealing specifically with labour inspection, other Conventions either reproduce the majority of provisions of Convention No. 81 (for instance in Part XI of the Plantations Convention, 1958 (No. 110)), or contain standard articles providing for the establishment of an appropriate system of inspection to ensure their implementation. Of particular relevance to the NCS sector in this context, as has been pointed out, is the fact that Article 9 of the Occupational Safety and Health Convention, 1981 (No. 155), which by virtue of its Article 3 specifically covers the "public service" and "public employees", stipulates that: "1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be

secured by an adequate and appropriate system of inspection. 2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations."

ACTIVITIES BY DIFFERENT ILO BODIES

The International Labour Conference has adopted a variety of resolutions and conclusions on labour protection and inspection of relevance to the NCS sector. For example, at its 70th Session (1984), the Conference adopted conclusions which stressed that "the improvement of working conditions and environment requires efficient labour administration and, in particular, effective labour inspection. Systems of labour inspection should be strengthened in order to improve their capacity to secure the enforcement of legal provisions, supply technical information and advice and identify new needs for action."[1]

Again, at its 71st Session (1985), the Conference adopted a Resolution concerning the promotion of measures against risks and accidents arising out of the use of dangerous substances and processes in industry, which stressed at the outset that "international labour standards on safety and health should be universally applied and strengthened".

In addition to its action related to standard-setting activities, the Governing Body decided five times in the post-war period to choose labour inspection as a subject for reports to be submitted by Members in accordance with article 19 of the Constitution, leading to the publication of general surveys by the Committee of Experts on the Application of Conventions and Recommendations in 1951, 1957, 1966, 1969 and 1985. This was seen as an indication of the importance that the Governing Body attaches to the ILO's labour inspection instruments. In 1985, the Committee noted in its general survey (devoted exclusively to labour inspection): "However advanced it may be, a country's labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it. This is particularly important in times of economic recession when the improvement of working conditions tends to be pushed into the background."[2] This observation would appear to be of particular relevance to the NCS sector, which at present does not escape the consequences of economic recession and where, as has been seen, many countries apply their labour legislation but do not provide for the labour inspection system to enforce it.

The Committee of Experts has constantly followed the subject of labour inspection, dealing with it, for example, in the general sections of its Reports to the Conference. Thus, in 1986, the Committee recalled the importance, at both national and international levels, "of the effectiveness of national labour inspection services in securing the enforcement of the relevant legal provisions and the effective implementation in practice of the two Conventions".[3] In 1988, the Committee, in its general observation concerning questions of the application of Conventions Nos. 81 and 129, noted with concern that in many countries which have ratified Convention No. 81 some of the fundamental provisions of the Convention were not fully applied. The Committee expressed the hope that "governments will recognize the very important role of the inspection services in the field of labour protection and will endeavour to fulfil the obligations resulting from Convention No. 81".[4] In 1992, the Committee

recalled that "labour inspection is a key element in workers' protection and that it should consequently be given all due priority by bodies of all kinds which have to design global policies and programmes in this area". It went on to state that "the Committee strongly believes that governments should give greater weight in public spending decisions to the obligations created by ratification of the Conventions and the need to ensure that duly enacted legal provisions in the labour sphere are complied with. Similarly, the Committee would stress the contribution which labour inspection can make to overall economic development and the husbanding of valuable resources, by helping to diminish illegality and consequent inefficiency in the workplace and thus both directly and indirectly promoting greater productivity."[5]

THE SECTORAL ACTIVITIES PROGRAMME

Under this programme, a considerable number of bodies relevant to the NCS sector (standing committees, joint committees, advisory committees and technical meetings) are regularly convened. Most of their sessions also deal with labour protection and labour inspection matters relevant to parts or all of the different NCS subsectors.

Thus, the Joint Committee for Postal and Telecommunications Services, at its First Session (1984), concluded that while the introduction of new techniques in postal and telecommunications services had led to a decrease in certain physical risks for some categories of workers, this had to some extent been offset by the emergence of new physical and psycho-social hazards arising from the use of new technologies. The conclusions listed a very extensive set of risks pertaining to these services. They went on to state that: "In accordance with the provisions of ... Convention No. 81 ... national legislation should ensure the existence of a system of labour inspection to secure the application of legal provisions, in particular those related to safety and health and the working environment, with staff and conditions of work independent of any change of government or any external influence."[6]

The Advisory Committee on Salaried Employees and Professional Workers, in its 9th Session (1985), adopted the following conclusions: "Member States should be invited to ratify and apply the provisions of the relevant international instruments in the commerce and offices sector. These include, for example, the Labour Inspection Convention and Recommendation, 1947 (both No. 81); the Occupational Cancer Convention, 1974 (No. 139), and its accompanying Recommendation (No. 147); the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), and its accompanying Recommendation (No. 156), and other Conventions and Recommendations... The public authorities should supply a sufficient number of competent labour inspectors to undertake regular inspections to ensure the application of the legislation and the regulations in force in respect of safety and health in commerce and offices and to supply information and advice to employers and workers."[7]

The Joint Meeting on Employment and Conditions of Work in Health and Medical Services (1985) listed in its report a number of particular hazards to which workers in these services are exposed and stated in its conclusions that:

"The resulting ill-health places medical and health services among those branches with the highest incidence of occupational diseases and injuries... Measures should be taken at all levels to control occupational health hazards and prevent occupational accidents and diseases in medical and health services. These measures should aim at providing a working environment and conditions where the worker is protected, as far as reasonably practicable, from any physical, mental or social harm by rules appropriate to the technological and social level of the society. These measures should apply to all workplaces and to all workers, with special attention to vulnerable groups such as young people, pregnant women or the handicapped." The Meeting demanded that: "In accordance with the provisions of the Labour Inspection Convention, 1947 (No. 81), national legislation should ensure the existence of a system of labour inspection to secure the application of legal provisions related to safety and health at work and the working environment."[8]

The Joint Meeting on Employment and Working Conditions in Water, Gas and Electricity Supply Services (1987) adopted conclusions on a number of activities to protect and improve occupational safety and health and the working environment in these sectors. The need for preventive action in this field was stressed. The Meeting adopted a Resolution calling on member States to ratify and enforce relevant ILO Conventions.[9]

The Report of the Joint Meeting on Conditions of Employment and Work of Fire-fighting Personnel (1990) dealt extensively with labour protection issues. It concluded, inter alia, that: "Fire-fighting is by its nature a hazardous occupation. Every effort must be jointly made by the authorities and the trade unions concerned to ensure the elimination of avoidable risks by the strict application of appropriate safety regulations and procedures and by systematic inspections of fire stations and equipment."[10]

The Joint Committee for Postal and Telecommunications Services, at its Second Session (1991), adopted a Resolution calling for the application in postal and telecommunications services of international labour standards.[11] The report of the Meeting noted that: "in many cases the public service, or even the entire public sector, was excluded from the scope of occupational safety and health legislation or that it was not subject to the authority of the labour inspectorate. The question that then arose was whether the postal and telecommunications services were covered by an adequate alternative system, either separately or as part of the public service. This appeared not to be the case, even in highly industrialized countries... It was wrong to imply... that privatization provided an automatic means of improving health and safety protection... The effects could be particularly serious in developing countries." Another problem noted was that "in some countries, occupational safety and health legislation applied only to manufacturing but not to services and was outdated, or inadequately enforced."[12]

The Second Joint Meeting on Conditions of Work of Teachers (1991) adopted a resolution calling on the Office to, inter alia, ensure the promotion of, and support to the application of international labour standards in the teaching sector, and invited the Governing Body to request the Director-General to carry out studies in the area of occupational safety and health, occupational stress, workload, and other working conditions of teachers.[13]

At its First Session (1992), the newly formed Standing Technical Committee for Health and Medical Services passed a resolution dealing with a number of specific labour protection matters of relevance also to effective labour inspection in that (sub-) sector, and requesting to include those issues on the agenda of its next session.[14]

Finally, at the time of drafting this document, the Fifth Session (1994) of the Joint Committee on the Public Service had just begun. The Office report for this meeting again dealt with a number of issues related to labour protection (such as conditions of work, working time, increased workload, etc.) the enforcement of which in many countries is incumbent upon the labour inspectorate in the private sector, but rarely in public-service-type employment.[15]

Other activities

Labour inspection in the Office is the responsibility of the Labour Administration programme. The objective of this programme is to build up effective labour administration systems in member States in line with the Labour Administration Convention, 1978 (No. 150), and Recommendation (No. 158), since without labour administration and national labour legislation, international labour standards could not be implemented. The programme's labour inspection subprogramme has as its main objective to develop and strengthen effective and efficient modern labour inspection systems in member States, to ensure that they can carry out their mission as defined in ILO Conventions Nos. 81 and 129.

The subprogramme contributes substantially to all major areas of ILO activities: standard-setting and supervision of application of standards, technical cooperation, and studies and research. Of particular relevance to the subject under review are two recent studies, *Labour inspection in the non-commercial services sector* (1991)[16] and *Labour inspection in the public sector* (1993).[17] Another recent publication on the subject is entitled *International labour standards concerned with labour inspection: Main provisions* (1991).[18] From this study it can be concluded that in the area of supervision of safety and health more than ten Conventions are of direct relevance to the NCS sector; in the field of supervision of working conditions, some 11 Conventions are applicable to the sector; and in the domain of supervision of respect for fundamental rights, at least five Conventions are also of relevance to NCS employees, illustrating the very broad range of responsibilities incumbent, in principle, on labour inspectors under international labour standards in this field. From the foregoing, it can be seen that international standards and activities have already paved the way for effective and comprehensive labour inspection in the NCS sector.

Notes

[1] ILO: *Official Bulletin* (Geneva), 1984, Series A, No. 2, p. 113.

[2] idem: *Labour inspection: General Survey by the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4B), International Labour Conference (ILC), 71st Session, Geneva, 1985, para. 3, p. 1.

[3] idem: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries* (subsequently referred to as *Report of the Committee of Experts*), Report III (Part 4A), ILC, 72nd Session, Geneva, 1986, p. 119.

[4] idem: *Report of the Committee of Experts*, 1988, para. 58, p. 20.

[5] idem: *Report of the Committee of Experts*, 1992, paras. 55-56, p. 21.

[6] idem: *Report of the Joint Committee for Postal and Telecommunications Services*, First Session, Geneva, 1984, pp. 49 and 52.

[7] idem: *Note on the proceedings*, Advisory Committee on Salaried Employees and Professional Workers, Ninth Session, Geneva, 1985, p. 68.

[8] idem: *Report of the Joint Meeting on Employment and Conditions of Work in Health and Medical Services*, Geneva, 1985, pp. 39-40.

[9] idem: *Report of the Joint Meeting on Employment and Working Conditions in Water, Gas and Electricity Supply Services*, Geneva, 1987, p. 34.

[10] idem: *Report of the Joint Meeting on Conditions of Employment and Work of Fire-fighting Personnel*, Geneva, 1990, p. 24.

[11] idem: *Report of the Joint Committee for Postal and Telecommunications Services*, Second Session, Geneva, 1991, p. 35.

[12] ibid., p. 44.

[13] idem: *Final Report*, Second Joint Meeting on Conditions of Work of Teachers, Geneva, 1991.

[14] idem: *Note on the proceedings*, Standing Technical Committee for Health and Medical Services, First Session, Geneva, 1992, p. 46.

[15] idem: *General report*, Joint Committee on the Public Service, Fifth Session, Geneva, 1994.

[16] idem: *Labour inspection in the non-commercial services sector*, Labour Administration Branch Document No. 30, Geneva, 1991.

[17] idem: *Labour inspection in the public sector*, Labour Administration Branch Document No. 37, Geneva, 1993.

[18] idem: *International labour standards concerned with labour inspection: Main provisions*, Geneva, 1991.

CHAPTER IV

THE CASE FOR A NEW INTERNATIONAL INSTRUMENT

THE CLIMATE OF CHANGE

These are turbulent times in the NCS sector. Structural adjustment policies in many member States in Latin America, Africa and Asia are having a significant impact on the sector. In Central and Eastern Europe as well as Central Asia, enterprises and services are being transferred out of state ownership, and in other countries services and functions previously regarded as unquestionably the responsibility of the State are being privatized or subcontracted. Some state functions are transferred to charities or religious bodies, which even if paid for, cannot be defined as "industrial or commercial".

Available information shows that in recent years in some countries the numbers of employees in the NCS sector have remained static. In many others the numbers have actually increased. Several countries report redeployment rather than redundancy. And as economies experience renewed growth after a recession, revived public expectations are also likely to lead to further expansion of the NCS sector in many countries in which the State retains a wide responsibility for services to the public. If anything, the size of employment in the sector worldwide appears to be on the increase again.

At the same time, labour inspectorates are developing different approaches to employers, placing greater stress upon internal control or self-regulation and emphasizing the coincidence of interests between good labour protection policies and efficient, cost-conscious quality management, providing quality services, etc. — an approach which should appeal to all who provide a service to the public and are under pressure to do so more effectively and productively. Furthermore, it is clear from the experience of a number of countries which have been applying Convention No. 81 to the NCS sector over the last 20 years or so that many of the concerns expressed originally about the cost and difficulty of doing this have proved to be not insuperable or even unfounded.

It has also been noted that the Occupational Safety and Health Convention, 1981 (No. 155), which deals with parallel concerns to those of Convention No. 81, is applicable to "all branches of economic activity" (Article 1(1)), which is defined as covering all branches in which workers are employed, "including the public service" (Article 3(a)). In practice, this has not been found to pose insurmountable problems in the 21 countries which have ratified that instrument to date. Similarly, the Occupational Health Services Convention, 1985 (No. 161), refers specifically to labour inspection and also covers all categories of workers. To that extent, therefore, the proposed instrument does not break new ground in envisaging comprehensive inspection of the NCS sector

and effective remedial procedures as contained in Convention No. 81, since the International Labour Conference has already set a precedent in deciding that it is possible to envisage obligations on inspection of and, if necessary, remedial action towards employers of the public service, who comprise a substantial and — generally speaking — the most "sensitive" part of the NCS sector.

Justification for change

Macro-economic changes do not in any way reduce the need to ensure equality of labour protection and effective labour inspection whatever the sector affected. Rather, the present climate makes it still more important to ensure that legitimate competitive pressures and a commendable concern to minimize financial demands on the public do not adversely affect the working conditions of those who serve the public in the NCS sector.

The description of national law and practice in Chapter II shows the very considerable disparities which exist between the industrial/commercial sector and the NCS sector in the application of labour protection legislation, the extent of inspection (if any) and the availability and use of effective remedial measures. The disparities arise for a number of reasons, including lack of or less comprehensive protective provisions covering civil servants and NCS-sector employees; severe limitations on, or even exclusion of, labour inspection in the NCS sector; resource constraints; a failure to appreciate the extent of existing and, in particular, new risks in the NCS sector; lack of information and understanding about accidents and ill-health; the problems faced by civil servants trying to reconcile conflicting priorities; and, importantly, the absence of effective powers to persuade or, ultimately, to compel NCS bodies to comply with labour protection legislation. Employers in industry and commerce who are in direct competition with non-commercial bodies providing a similar service understandably resent the fact that their competitors may benefit from lower oncosts because they provide lower levels of protection or poorer working conditions. Many countries accept explicitly in their legislation or by tradition that the State has a moral obligation to look after its employees in return for their loyalty and service. However, directors and managers of NCS establishments are subject to the same pressure as, and in some cases more intense pressure than, managers in industry or commerce, as they seek to square political imperatives with conflicting priorities and an inflexible budget.

It is therefore vital that working conditions, and in particular the health and safety of employees in the NCS sector, are not subordinated to financial or other considerations any more than in industry or commerce. To ensure that this is the case it is essential not only that the same legal provisions apply, but also that there is an effective countervailing force, an independent labour inspectorate to make an assessment, advise, persuade and, if necessary, compel NCS authorities to meet standards at least equivalent to those applicable elsewhere. As has been shown, quite a number of countries have devised ways of doing this without infringing the constitutional rights of the State, by taking account of the constraints on NCS bodies, accommodating the imperatives of confidentiality and national security, and sometimes by making use of established "internal" inspection systems by mandating the labour inspectorate to formally oversee

their plans and activities. Inspectors in these countries have tended to use the existence of remedial measures, including sanctions — or more often quasi-sanctions — to promote a cooperative rather than confrontational relationship between the labour inspectorate and NCS establishments.

However, when it has been shown to be necessary, inspectors must equally be able to put pressure on uncooperative officials or managers in the NCS sector. Overwhelming evidence from many countries shows that if such remedial means are not available to labour inspectors, the most advanced labour protection legislation becomes a blunt instrument. However, various means, short of legal proceedings and punitive fines, have often also proved effective in bringing about action. Thus, when there is a dispute, established procedures to refer the issue progressively up through the hierarchies of the relevant NCS body and the labour inspectorate to cabinet level, if necessary, for joint decision usually result in senior officials coming to an agreement before that stage is reached. The provision of details of remedial requirements to the workers' representatives or their publication in official reports, if unresolved, usually also has a similar effect. And even in those countries where NCS organizations or managers of state, regional or local administrations are liable to fines or other penalties, they understandably wish to avoid the public embarrassment of convictions or fines being reported in the press and therefore generally prefer to make the necessary improvements.

Thus, however much may be achieved by persuasion and agreement, such remedial powers must exist and be known to exist. It is their existence which compels the NCS official or manager concerned to take notice of what is said, to actually assess the alleged risk, to contemplate the consequences of failing to take remedial action, and to weigh the costs of compliance against other equally legitimate calls upon his or her time and financial resources. Only the existence of this countervailing force acting on behalf of the employees can ultimately guarantee the necessary reappraisal of priorities between equally desirable ends. On the other hand, the causes of unsatisfactory labour protection may not be financial but managerial. The deficiencies may stem from stubbornness or incompetence, which may not have been perceived by more senior officials or managers, who may not be aware of how vulnerable they are to criticism and worse if there is a serious incident. The impact of a remedial order may therefore be to provide a valuable warning to the NCS establishment to take effective managerial action to improve the protection of its workers.

An international instrument or instruments can be designed sufficiently flexibly to respond to the legitimate concerns of Members that opening up the NCS sector to labour inspection may threaten their ability to meet their constitutional duties and obligations to the community. The armed services and police must be protected from the risk of disclosure of information and should be consulted when deciding who makes inspections, what information is provided and how it is used and retained. Again, there is an unavoidable professional risk associated with the work of the armed services, police, fire brigades and rescue services and it would not be reasonable to envisage labour inspection during a rescue or police operation. There may also have to be special provisions in respect of the training for such hazardous occupations. The proposed instrument(s) can take into account appropriate arrangements to

reconcile these national imperatives with the essential elements of effective labour inspection.

This report has shown that there are significant, often unique risks to workers in the NCS sector, and that there are great disparities both in the labour protection provisions and in the inspection services which apply to these workers, but that it is nevertheless possible to create comprehensive, effective inspection systems to cover all parts of that sector. The proposed instrument(s) would provide an opportunity for employers operating in that field to see an end to unfair competition from NCS-sector bodies with lower labour protection oncosts, for workers to benefit from effective labour inspection and for governments, which are after all the ultimate paymasters of NCS-sector bodies, to see them adopt management policies and practices that not only raise protective standards but integrate them with more effective, notably cost-effective procedures giving a better service to the public.

Practicability of change

It is important to assess ways of handling some of the issues which appear at first sight to pose problems for the extension of labour inspection to the NCS sector. The key to dealing with certain particular sensitivities which may be aroused by an instrument of this nature is to understand the causes of such concerns and to provide sufficient flexibility to allow for the particular circumstances in individual member States whilst preserving the essential elements of the comprehensive and broadly consistent application envisaged by the draft instrument(s).

Thus, the definition of scope must take account of the sometimes very different understanding of what constitutes the NCS sector in different member States. Provision can be made to accommodate particular difficulties of application by allowing exclusions, at the time of ratification and in certain circumstances, while ensuring, however, that the issues are discussed with employers and workers concerned, that alternative arrangements are encouraged and that subsequent measures concerning the gradual reduction of exclusions are reported on.

The understandable concern of the State to preserve its security, the confidentiality of defence or anti-criminal information and the operational effectiveness of its armed services, police, fire and rescue services can be fully accommodated by special provisions. The role of labour inspection in contributing to the overall well-being of the community, and its needs in terms of access, or inspection facilities, must be balanced against the State's essential constitutional responsibilities. The international instrument(s) can fully take account of such concerns whilst still providing for labour inspection which may be slightly varied, but is nevertheless effective.

On the issue of powers of labour inspectors as defined in Article 13 of Convention No. 81, clearly the full exercise of such powers may raise questions of financial priorities where NCS-sector bodies are attempting to balance their obligations to the community with their duty to their employees. Many countries have devised means, whether through joint consultative bodies, joint planning, long-term programming of improvements or special provisions for

remedial orders, to avoid or to resolve potential conflicts between equally desirable objectives. If it is felt that certain remedial provisions of Convention No. 81 might be inappropriate in certain circumstances, the new instrument(s) could provide for member States to adopt alternative, but equally effective procedures.

A similar approach may be appropriate in the case of provisions concerning legal proceedings (Article 17 of Convention No. 81) whereby the instrument(s) may again permit member States to apply the provisions in respect of all or some subsectors of the NCS sector and allow the option of proposing alternative measures.

A degree of flexibility could thus be introduced into the new instrument if it were felt necessary and appropriate to take account of the understandable sensitivity of some governments on these issues.

Flexibility in the proposed instrument(s)

The essential purpose of flexibility is to take into account the differences in the levels and conditions of development of ILO member States, without prejudicing the universal perspective in which standards must be adopted. Flexibility devices used in existing ILO standards, particularly over the past 20 years, in order to give effect to article 19, paragraph 3, of the Constitution of the ILO, are numerous and varied. The choice between a Protocol, a Convention and/or a Recommendation which defines objectives, while leaving considerable freedom as to the measures through which to attain these objects, already takes into account the need for flexibility in drawing up standards. Other flexibility devices have been used: the possibility of accepting only parts of an instrument; a choice between parts of an instrument that lay down obligations that vary in their degree of stringency; clauses restricting the scope of acceptance; clauses for the gradual application of instruments, under which the protection is progressively increased or extended; temporary exceptions; flexibility in application procedures (implementation through legislation or collective agreements; the adoption of measures that conform to national conditions and practice, etc.). Although there is thus a wide variety of options, it has been noted by the Committee of Experts that existing flexibility clauses are sometimes little used.

A possible new instrument

While Convention No. 81, the basic standard on labour inspection, is still as relevant and forward-looking as it was when adopted in 1947, the need now clearly appears for further action at the international level to provide protection to the NCS sector. Such action could take the form of a new Convention and/or a Recommendation or, as suggested in the 1985 general survey of the Committee of Experts, a Protocol to Convention No. 81 extending its provisions to the NCS sector.

The question is therefore which approach to adopt. A new instrument or instruments could be formulated in relation to this sector in the same way as, for example, the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and

Recommendation (No. 133) were adopted to provide for labour inspection in that sector. A Convention and a Recommendation were deemed appropriate in view of the rather special nature of the agricultural sector and, in consequence, the need for particular protection required in the case of agricultural workers. On the other hand, a Recommendation only was considered acceptable with regard to the mining and transport sectors, Convention No. 81 permitting the exemption of undertakings in these sectors from the application of its provisions. In the case of the NCS sector it may be concluded that identical protection, through binding obligations, to that afforded to workers in industrial and commercial undertakings should be extended to workers in this sector, since they often undertake very similar work and are faced with the same risks — and possibly others — as workers in these undertakings. Should the Conference agree with this conclusion, it would not be necessary to propose the adoption of a Convention since it would be possible to extend the provisions of Convention No. 81 to the NCS sector by means of a Protocol to that Convention. Such a Protocol would constitute a binding instrument open to ratification by member States. It could be adopted without recourse to the double-discussion procedure. Conversely, the adoption of a Recommendation only would weaken the protective guarantees that are being sought for the NCS sector through binding obligations which can only be contained in a Convention or Protocol. Unlike the transport sector, for instance, which is covered by Convention No. 81 in principle, and for which a Recommendation (the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82)) was thought at the time to suffice in underlining this fact, the NCS sector is at present clearly not covered by the provisions of Convention No. 81.

The establishments of the NCS sector to be covered could be identified in one of two ways. One option would be for the instrument itself to contain a definition of the NCS sector (or a list of certain specified categories of workplaces or subsectors) to which the substantive provisions of Convention No. 81 would be applied in the same way as Articles 22 to 24 of that Convention extend its provisions to the commercial sector. The second option would be for the instrument to leave it to each ratifying State to determine, within certain limits, for instance by a declaration accompanying its ratification, a minimum number of NCS categories of workplaces or subsectors (which would be listed in the instrument) to which it undertakes to apply the Convention, or conversely, certain subsectors which it wishes to exclude from the application of the new instrument(s).

Possible content of a Protocol

The essential components of a Protocol to Convention No. 81, which would achieve the above aims, are:

— a binding obligation on ratifying Members to open up administrations, services, undertakings and institutions in the NCS sector to labour inspection by extension of Convention No. 81 to that sector;

— an acceptance by Members that labour inspectorates should have appropriate remedial powers to ensure that improvements are effected; and

— an acceptance that such remedial powers may, if necessary, be backed up by legal proceedings.

In considering the possible content of a Protocol it is important to recall the issues discussed in Chapters I and II. The questionnaire which follows this report has been prepared accordingly.

Questions 1 and 2 concern the nature of the new instrument(s). When, as recalled in the Introduction, the Governing Body decided to propose the extension of ILO Convention No. 81 to activities in the NCS sector, it noted that the subject would be dealt with by the Conference under the single-discussion procedure, thus implying that the extension would take the form of a Protocol to Convention No. 81 (or possibly a Protocol and a Recommendation). Question 2 gives respondents the opportunity to express a view on this proposal. Questions 3 and 4 invite comments on the considerations which justify the proposed Protocol.

Questions 5 and 6 deal with issues of definition. The difficulties of defining the NCS sector — and in particular the differences between Members as to what constitutes this sector — were set out in Chapter I. The wording of the questions is closely linked to the text of Convention No. 81, which it is intended to extend to the sector so defined.

Question 7 asks for views on an exemption of certain specified categories of workplaces from the application of the proposed instrument(s), and question 8 on the possibility of certain exclusions by individual Members. Question 9 concerns possible supplementary arrangements in the event of an exclusion. Question 10 invites other proposals regarding the future instrument(s), and question 11 addresses the possibility of providing that measures ensuring the implementation of the proposed instruments be prescribed by national law and regulations.

As already noted, Members may be understandably concerned to protect national security and to ensure that their national government services, armed services, police, fire brigades, other rescue services and prison services can operate at full efficiency at all times in the service of the community. Important as it is, the process of labour inspection must not compromise the primary role of those services. Therefore, certain powers conferred on inspectors under Article 12 of Convention No. 81 may need to be modified or restricted. Questions 12 to 16 invite comment on such possible special arrangements to ensure practical solutions which satisfy certain legitimate concerns.

It is apparent from experience in many countries that, as in industry and commerce, the labour inspectorate must have adequate powers vis-à-vis the NCS sector to make or have made orders requiring remedial measures within a specified time, or in the event of imminent danger to require measures with immediate executory force. Unless such powers are available, as has been shown, labour inspection will remain largely cosmetic. The view is nevertheless sometimes expressed that these powers may not be appropriate in some circumstances or in some subsectors of the NCS. Question 17 gives an opportunity to express any reservations about an issue vital to the effectiveness of the instrument(s) and in such an event to suggest alternative procedures.

Whilst it is accepted that persons in industry and commerce who violate or neglect to observe provisions enforceable by labour inspectors should be liable

to legal proceedings, the issue may raise certain problems in the NCS sector, notably in the case of those subsectors which are directly associated with the central authority of the State, the armed services, the police or prison services. Various approaches to the problem have been described in Chapter II. A few countries allow for legal proceedings in relation to such bodies and a number of others have devised alternative mechanisms. Question 18 invites comment on this important matter.

There is generally no difficulty in applying labour protection legislation to risks in the NCS sector, but a particular problem may arise in the case of training for occupations which are unavoidably hazardous. Such risks should be reduced to a minimum, and question 19 invites comments on a proposal to make some specific arrangements in relation to these subsectors of the NCS sector.

If respondents considered in reply to question 2 that the instruments should take a form of a Protocol and a Recommendation, or a Recommendation only, questions 20 and 21 give the opportunity to comment on the content of a possible Recommendation.

Lastly, questions 22 to 24 deal with implementation and any special problems of application that may be faced by member States, and provide an opportunity to comment on any other pertinent problems which ought to be considered.

QUESTIONNAIRE

In accordance with article 38 of the Standing Orders of the International Labour Conference, governments are requested to consult the most representative organizations of employers and workers before finalizing their replies to the following questionnaire, and to send their replies, indicating the reasons for each reply, so as to reach the International Labour Office in Geneva by 30 September 1994 at the latest.

I. Form of the international instrument(s)

1. Do you consider that the International Labour Conference should adopt an international instrument(s) to extend the Labour Inspection Convention, 1947 (No. 81), to workplaces not considered to be industrial or commercial for the purposes of its application?

2. If so, do you consider that the instrument(s) should take the form of:

(a) a Protocol to the Labour Inspection Convention, 1947 (No. 81)?

(b) a Protocol supplemented by a Recommendation?

(c) a Recommendation?

II. Preamble

3. Should the instrument(s) contain a preamble referring to relevant ILO instruments including the Labour Inspection Convention, 1947 (No. 81), and the Occupational Safety and Health Convention, 1981 (No. 155)?

4. Should the preamble provide that the instrument(s) should have regard to the special risks to which workers in the workplaces referred to in question 1 may be exposed, the need to ensure that these workers are subject to the same degree of protection in terms of health, safety and conditions of work as those in industrial and commercial workplaces and the need to ensure that they are subject to the same or an equally effective and impartial system of labour inspection?

III. Definition, scope and application

5. Taking into account the designation of the agenda item, should the instrument(s) contain a definition of the term "activities in the non-commercial services sector" to refer to categories of workplaces that are not considered as industrial or commercial for the purposes of Convention No. 81?

6. Should the instrument(s) define their scope, subject to possible exclusions as set out in question 7, in terms of all workplaces that are not already included among industrial or commercial workplaces to which legal provisions relating to conditions of work and the protection of workers while engaged in their work apply that are enforceable by labour inspectors?

7.(1) Should the instrument(s) provide for the exclusion of specified categories of workplaces from the scope set out in question 6?

(2) If so, which of the following categories of workplaces that are not already included among industrial or commercial workplaces for the purposes of Convention No. 81 should be excluded from the scope of the new instrument(s)?

(a) national (federal) government administrative services?

(b) provincial, regional, district or local administrative services?

(c) the armed services? (Please distinguish between uniformed personnel and non-uniformed (civilian) employees.)

(d) the police and other public security services?

(e) prison services? (Please distinguish between prison staff and inmates performing work.)

(f) fire brigades and other rescue services?

(g) education services (primary, secondary, tertiary)?

(h) health services, including laboratories?

(i) postal and telecommunication services?

(j) public transport services, including railways?

(k) utilities such as electricity supply, gas, water, waste collection and disposal?

(l) social and welfare services, including charities?

(m) cultural and recreational services?

(n) other categories of workplaces not already considered to be industrial or commercial for the purposes of Convention No. 81? (Please specify.)

(3) Should the instrument(s) provide for alternative inspection arrangements for any categories of workplaces thus excluded?

8.(1) Should a Member, at the time of ratification of a Protocol to Convention No. 81, be permitted to exclude wholly or partly from its scope specified categories of non-industrial and non-commercial workplaces if the application of the Convention to them would raise special problems of a substantial nature?

(2) If so, with regard to which categories listed in question 7(2) should such exclusion be permitted?

(3) Should any such exclusion be subject to prior consultation with the representatives of employers and workers concerned, and/or the most representative organizations of employers and workers?

9.(1) Do you consider that a Member which avails itself of the possibility afforded in question 8 should, in its first report under article 22 of the Constitution of the ILO, indicate for the categories of workplaces thus excluded the reasons for the exclusion and any alternative inspection arrangements which may be applicable to them?

(2) If so, should it describe in subsequent reports all measures taken with a view gradually to extend the provisions of the instrument(s) to the workplaces concerned?

10. Have you any other proposals regarding the scope of the proposed instrument(s)?

11.(1) Should the instrument(s) provide that any measures for ensuring their implementation be prescribed by national laws or regulations?

(2) If so, should the instrument(s) provide that measures taken to give effect to them be drawn up in consultation with representatives of the employers and workers concerned and/or the most representative organizations of employers and workers?

IV. Additional provisions

12.(1) Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces in the armed services, if they fall within their scope?

(2) If so, should such arrangements permit any of the following limitations on the powers of labour inspectors as provided in Article 12 of Convention No. 81:

(a) restriction of entry to inspectors having appropriate security clearance?

(b) inspection only by appointment?

(c) restriction on the requirement to produce documents?

(d) the retention of confidential documents on the premises?

(e) restriction on the taking and analysis of samples of materials and substances?

(f) the prohibition of inspection during manoeuvres or exercises?

(g) the prohibition of inspection of frontline or active service units?

(h) the restriction or prohibition of inspection during declared periods of tension? (If so, please specify whether a restriction or a prohibition.)

(i) special provisions in respect of the transport of explosives and armaments?

(j) other limitations? (If so, please specify which.)

(3) Should any of the limitations in paragraph 2 apply in the same manner to sites at which civilian (non-uniformed) employees work? (If so, please specify.)

13.(1) Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces of the police and/or other public security services, if they fall within their scope?

(2) If so, should such arrangements permit any of the limitations set out in question 12(2)? (Please specify.)

(3) If limitations are permitted with regard to inspection during active policing or security operations, should the instrument(s) provide that the competent authority should review such operations periodically and after any significant incident?

14.(1) Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces of fire brigades and other rescue services, if they fall within their scope?

(2) If so, should such arrangements permit the restriction or prohibition of inspection during the actual fighting of a fire or during rescue or other emergency operations? (If so, please specify whether a restriction or a prohibition.)

(3) If it is considered that inspection should be so restricted or prohibited, should the instrument(s) provide that the competent authority should review such operations periodically and after any significant incident?

15.(1) Should the instrument(s) provide that a Member may make special arrangements for the inspection of prisons, if they fall within their scope?

(2) If so, should such arrangements permit any of the following limitations on the powers of labour inspectors as provided in Article 12 of Convention No. 81:

(a) restriction of entry to inspectors having appropriate security clearance?

(b) inspection only by appointment?

(c) restriction of inspection during declared periods of tension?

(d) other restriction of inspection related to security requirements? (If so, please specify.)

(3) Should the instrument(s) apply in the same manner to prison staff and prisoners when performing work?

16. Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces in national (federal) government administrative services, if they fall within their scope? (If so, please specify.)

17.(1) Should the instrument(s) preclude labour inspectors from having, in respect of any of the categories of workplaces referred to in question 7, the powers provided for in Article 13 of Convention No. 81, namely:

(a) to make, or have made, orders requiring alterations to the installation or plant within a specified time?

(b) to make, or have made, orders requiring measures with immediate executory force in the event of imminent danger to the health or safety of workers? or

(c) alternatively to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force of the type described in (a) or (b) above?

(2) If you have answered "yes" to paragraph 1 of this question, should the instrument(s) provide in such circumstances for alternative measures? (If so, please specify.)

18.(1) Should the instrument(s) provide that the provisions of Article 17, paragraph 1 of Convention No. 81 shall not apply in respect of specified categories of persons? (If so, please specify the categories.)

(2) If you have answered "yes" to paragraph 1 of this question, should the instrument(s) provide in such circumstances for alternative measures in addition to warnings and advice as provided in Article 17, paragraph 2 of Convention No. 81? (If so, please specify.)

19. Should the instrument(s) provide that the labour inspectorate should have a role in formulating and monitoring effective measures to minimize risks during training for potentially hazardous work?

V. Content of a Recommendation

20. If, in reply to question 2, you stated that the instrument(s) should take the form of a Protocol supplemented by a Recommendation, please specify the matters you consider appropriate for the Recommendation.

21. If you favoured a Recommendation only, please specify the matters you consider appropriate for it.

VI. Special problems

22.(1) Are there any particularities of national law or practice which, in your view, are liable to create difficulties in the practical application of the international instrument(s) as conceived in this questionnaire?

(2) If so, please state the difficulties and indicate how you would suggest that they be met?

23. (Federal States only.) Do you consider that, taking into account the provisions of Article 4, paragraph 1 of Convention No. 81, the proposed instrument(s) need to make any further provision in regard to the extension of application of the Convention in federal States? If so, please specify.

24. Are there, in your view, any other pertinent problems not covered by this questionnaire which ought to be taken into consideration in the drafting of the instrument(s)? If so, please specify.

APPENDIX

SUBSTANTIVE PROVISIONS OF THE LABOUR INSPECTION CONVENTION, 1947 (No. 81)

. . . . . .

PART I. LABOUR INSPECTION IN INDUSTRY

Article 1

Each Member of the International Labour Organization for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

Article 2

1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

Article 3

1. The functions of the system of labour inspection shall be:

(a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;

(b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;

(c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 4

1. So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

2. In the case of a federal State, the term "central authority" may mean either a federal authority or a central authority of a federated unit.

Article 5

The competent authority shall make appropriate arrangements to promote:

(a) effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities; and

(b) collaboration between officials of the labour inspectorate and employers and workers or their organizations.

Article 6

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 7

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.

2. The means of ascertaining such qualifications shall be determined by the competent authority.

3. Labour inspectors shall be adequately trained for the performance of their duties.

Article 8

Both men and women shall be eligible for appointment to the inspection staff; where necessary, special duties may be assigned to men and women inspectors.

Article 9

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

Article 10

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

(a) the importance of the duties which inspectors have to perform, in particular—

(i) the number, nature, size and situation of the workplaces liable to inspection;

(ii) the number and classes of workers employed in such workplaces; and

(iii) the number and complexity of the legal provisions to be enforced;

(b) the material means placed at the disposal of the inspectors; and

(c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 11

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with—

(a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;

(b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

(a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;

(b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and

(c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular—

(i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;

(ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;

(iii) to enforce the posting of notices required by the legal provisions;

(iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 13

1. Labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.

2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring—

(a) such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers; or

(b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

3. Where the procedure prescribed in paragraph 2 is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force.

Article 14

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 15

Subject to such exceptions as may be made by national laws or regulations, labour inspectors—

(a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;

(b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and

(c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 16

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 17

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 18

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 19

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Article 20

1. The central inspection authority shall publish an annual general report on the work of the inspection services under its control.

2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.

3. Copies of the annual reports shall be transmitted to the Director-General of the International Labour Office within a reasonable period after their publication and in any case within three months.

Article 21

The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:

(a) laws and regulations relevant to the work of the inspection service;

(b) staff of the labour inspection service;

(c) statistics of workplaces liable to inspection and the number of workers employed therein;

(d) statistics of inspection visits;

(e) statistics of violations and penalties imposed;

(f) statistics of industrial accidents;

(g) statistics of occupational diseases.

PART II. LABOUR INSPECTION IN COMMERCE

Article 22

Each Member of the International Labour Organization for which this Part of this Convention is in force shall maintain a system of labour inspection in commercial workplaces.

Article 23

The system of labour inspection in commercial workplaces shall apply to workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

Article 24

The system of labour inspection in commercial workplaces shall comply with the requirements of Articles 3 to 21 of this Convention in so far as they are applicable.

PART III. MISCELLANEOUS PROVISIONS

Article 25

1. Any Member of the International Labour Organization which ratifies this Convention may, by a declaration appended to its ratification, exclude Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate each year in its annual report upon the application of this Convention the position of its law and practice in regard to the provisions of Part II of this Convention and the extent to which effect has been given, or is proposed to be given, to the said provisions.

Article 26

In any case in which it is doubtful whether any undertaking, part or service of an undertaking or workplace is an undertaking, part, service or workplace to which this Convention applies, the question shall be settled by the competent authority

Article 27

In this Convention the term "legal provisions" includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

Article 28

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labour Organization full information concerning all laws and regulations by which effect is given to the provisions of this Convention.

Article 29

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

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